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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

RYAN CAYABYAB,

Plaintiff,

v.

Experian Information Solutions, Inc.;
Equifax, Inc.; TD Bank USA, National
Association and DOES 1 through 100
inclusive,

Defendants.

CASE NO.

COMPLAINT FOR DAMAGES:

1. Violation of Fair Credit Reporting Act;
2. Violation of California Consumer Credit Reporting Agencies Act;

COMES NOW Plaintiff RYAN CAYABYAB, an individual, based on information and belief, to allege as follows:

INTRODUCTION

1. This case arises under the Fair Credit Reporting Act, 15 U.S.C. § 1681s-2(b), 15 USC 1681i-(a)1, and the California Consumer Credit Reporting Agencies Act, California Civil Code §1785.25(a). Plaintiff seeks redress for the unlawful and deceptive practices committed by the Defendants in connection with their inaccurate, misleading, or incomplete reporting of Plaintiff's debt included in Plaintiff's Chapter 13 bankruptcy.
2. The United States Congress has found the banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the

1 banking system, and unfair credit reporting methods undermine the public confidence,
2 which is essential to the continued functioning of the banking system.

- 3 3. There exists today in the United States a pervasive and fundamental misunderstanding
4 about the long term impact filing a consumer bankruptcy has on a consumer's credit
5 worthiness. Specifically, many consumers believe that because a bankruptcy can be
6 reported on their credit report for ten years their credit worthiness will be ruined for the
7 same length of time. This is not true.
- 8 4. The *majority* of consumer Debtors who file consumer bankruptcy do so to *raise* their
9 FICO Score and remedy their poor credit worthiness.
- 10 5. It is entirely possible for consumer Debtors to have over a 700 FICO Score within as
11 little as 12 months after filing a consumer bankruptcy (Chapter 7 or Chapter 13).
- 12 6. Creditors and lending institutions are aware of the misconception that filing a consumer
13 bankruptcy destroys a consumer's credit worthiness for ten years.
- 14 7. In an effort to perpetuate the aforementioned bankruptcy myth, creditors intentionally
15 and routinely ignore credit reporting industry standards for accurately reporting
16 bankruptcies and debts included in those bankruptcies in an effort to keep consumers'
17 credit scores low and their interest rates high.
- 18 8. Creditors know that by deviating from recognized credit reporting standards consumers
19 will have difficulty raising their credit scores and improving their credit worthiness.
- 20 9. These credit reporting issues are most prevalent in Chapter 13 bankruptcy filings.
- 21 10. Consequently, in the United States today it is objectively worse for consumers' credit
22 worthiness to file Chapter 13 and pay back some or all of their debt, as opposed to
23 filing Chapter 7 liquidation where Creditors generally receive nothing.
- 24 11. This was not the intent of Congress when enacting the Fair Credit Reporting Act and
25 the Bankruptcy Abuse Prevention and Consumer Protection Act.

26 **JURISDICTION & VENUE**

- 27 12. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and
28 every paragraph above, fully set forth herein.
13. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1337, and 1367, and 15 U.S.C. §
1681

1 14. This venue is proper pursuant to 28 U.S.C. §1391(b).

2 **GENERAL ALLEGATIONS**

3 15. Plaintiff alleges that each and every defendant data furnisher was included in Plaintiff's
4 Chapter 13 bankruptcy filing.

5 16. Plaintiff alleges that each and every Defendant is familiar with credit reporting industry
6 standards and subscribes thereto.

7 17. Plaintiff alleges that each and every Defendant understands that deviation from credit
8 reporting industry standards can and often does result in denial of credit, higher interest
9 rates, and prompts those making credit decisions to draw a more negative inference
10 from the reported data than if the Defendant reported in accordance with the recognized
11 industry standard.

12 18. Plaintiff alleges that all actions alleged herein by Defendants were done knowingly,
13 intentionally, and in reckless disregard for credit reporting industry standards in an
14 attempt to purposefully undermine Plaintiff's ability to reorganize and repair Plaintiff's
15 FICO Score.

16 19. In the alternative Plaintiff alleges that each and every Defendant's actions was the
17 result of reckless policies and procedures that inevitably led to inaccurate, misleading,
18 or incomplete credit reporting.

19 **FICO, Inc.**

20 20. FICO is a leading analytics software company with its principal headquarters located in
21 San Jose California. FICO has over 130 patents related to their analytics and decision
22 management technology, and regularly uses mathematical algorithms to predict
23 consumer behavior including credit risk.

24 21. The FICO Score has become the standard measure of consumer credit risk in the United
25 States and is used in ninety percent of lending decisions.

26 22. A FICO score consists of a three-digit number summarizing a consumer's credit risk or
27 likelihood to repay a loan. FICO periodically updates its scoring models resulting in
28 multiple FICO Score versions.

23. Base FICO Scores range from 300 to 850, while industry-specific FICO Scores range from 250-900. A higher FICO Score demonstrates lower credit risk or less likelihood of default.
24. Different lenders use different versions of FICO Scores when evaluating a consumer's credit worthiness.
25. There are 28 FICO Scores that are commonly used by lenders.
26. A consumer's FICO Score is calculated based solely on information in consumer credit reports maintained at credit reporting agencies (CRAs).
27. The three largest CRAs are Experian Information Solutions, Inc.; Equifax, Inc. and Transunion, LLC.
28. FICO does not control what information is provided on a consumer's credit report. Instead, the scoring models or algorithms are based on the premise that information provided by the CRAs is accurate and complies with credit reporting industry standards.
29. There are five key factors that a FICO Score considers: 1) Payment History 2) Amount of Debt 3) Length of Credit History 4) New Credit and 5) Credit Mix.
30. Each of the five factors is weighted differently by FICO.
31. 35% of a consumer's FICO Score relates to payment history, 30% relates to the amount of debt, 15% relates to the length of credit history, 10% relates to new credit, and the last 10% relates to a consumer's credit mix or the different types of debts reported.
32. Payment history refers to whether a consumer has paid their bills in the past, on time, late or missed payments. The more severe, recent, and frequent the late payment information, the greater the impact on a FICO Score. Public record items such as bankruptcy, foreclosure, judgments, and wage garnishments are also considered part of a consumer's payment history.
33. In factoring the severity of delinquent payments a FICO Score considers how late the payment continues to be, how much is owed, how recently this occurred, and how many delinquent accounts exist.
34. Once a delinquent account has been remedied the longer the account stays current the more a consumer's FICO Score should increase.

1 35. FICO Scores are entirely dependent upon information provided by data furnishers
2 (DFs) to CRAs.

3 36. The FICO scoring formula treats both Chapter 7 and Chapter 13 Bankruptcies similarly
4 in terms of their impact on one's FICO Score. Specifically, both Chapters have the
5 same level of severity with respect to their FICO Score and for both, FICO uses the
6 FILING DATE to determine how long ago the bankruptcy took place.

7 **Metro 2**

8 37. The Consumer Data Industry Association is an international trade association
9 representing the consumer credit, mortgage reporting, employment and tenant screening
10 and collection service industries.

11 38. The credit reporting industry has adopted a standard electronic data reporting format
12 called the Metro 2 format. The Metro 2 format was developed by the CDIA in an effort
13 to universally report debts in a particular manner that is understood to be the most
14 accurate way in which to report a debt. Specifically, Metro 2 format was designed to
15 allow reporting of the most accurate and complete information on consumer's credit
16 history.

17 39. The CDIA's Metro 2 format is the credit reporting industry standard for accurate credit
18 reporting.

19 40. The credit reporting industry at large depends upon Metro 2 and the CDIA's
20 recommendations for reporting debt accurately.

21 41. The CDIA is *The* expert on accurate credit reporting. In support of this allegation
22 Plaintiff avers the following:

- 23 a. The CDIA offers a FCRA certificate program for all CRAs.
- 24 b. The CDIA offers a FCRA awareness program for all CRAs.
- 25 c. The CDIA offers a FCRA Certificate program for DFs.
- 26 d. The CDIA offers a FCRA awareness program for DFs.
- 27 e. The CDIA offers a Metro 2 Learning system to provide detailed instructions on
28 the use of Metro 2 format to ensure understanding of the reporting guidelines
for each field of the Metro 2 Format as well as the relationship between multiple
fields.

- 1 f. The CDIA hosts workshops developed and authorized by Equifax, Experian,
2 Innovis, and Transunion.
- 3 g. The CDIA developed a credit reporting resource guide for accurately reporting
4 credit.
- 5 42. The CDIA's Metro 2 is accepted by all CRAs.
- 6 43. The credit reporting accepted industry standards for reporting metro 2 accurately are
7 found in the CDIA's credit reporting resource guide (CRRG).
- 8 44. The CRRG outlines the industry standards for most accurately reporting debts using
9 Metro 2.
- 10 45. The CRRG is not readily available to the public. It can be purchased online for
11 \$229.45.
- 12 46. Even if a buyer is ready willing and able to pay for the CRRG, the CDIA will NOT
13 grant access to the guide unless the buyer represents an organization included in the
14 Metro 2 Access Policy.
- 15 47. When FICO calculates credit scores the algorithms use Metro 2 information based on
16 industry standards established by the CDIA.
- 17 48. The algorithms used by FICO in determining a consumer's credit score are premised on
18 the Metro 2 data received comporting with the CDIA's recommendations for accurate
19 credit reporting.
- 20 49. If the Metro 2 data received by FICO deviates from industry standards an inaccurate or
21 incorrect FICO Score results. If the resulting FICO Score is lower a consumer will be
22 considered a higher credit risk resulting in less favorable lending terms.

21 **e-OSCAR**

- 22 50. E-OSCAR is the web based Metro 2 compliant system developed by Experian
23 Information Solutions, Inc.; Equifax, Inc.; TransUnion, LLC and Innovis that enables
24 DFs and CRAs to create and respond to consumer credit disputes.
- 25 51. When a consumer sends a dispute letter to a CRA the CRA then sends an automated
26 credit dispute verification (ACDV) via e-Oscar to the DF.
- 27 52. The ACDV contains within it Metro 2 codes next to certain data fields associated with a
28 credit file e.g. "Account Type" "07" (07 in Metro 2 refers to a Charge Account).

**Bankruptcy Credit Reporting Industry Standards & Consumer
Information Indicator**

53. When a consumer files bankruptcy certain credit reporting industry standards exist.
54. Certain Metro 2 data is regularly expected and calculated by FICO when determining a consumer's credit worthiness.
55. The Consumer Information Indicator (CII) is a critical field in the Metro 2 Format that indicates a special condition that applies to a specific consumer.
56. Under Metro 2 the CII must be reported only on the consumer to whom the information applies.
57. It is the credit reporting industry standard to report a very specific CII upon the filing of a consumer bankruptcy.
58. In the consumer bankruptcy context CII Metro 2 Code "A" denotes that a petition for Chapter 7 has been filed, is active, but no discharge has been entered.
59. CII Metro 2 Code "D" indicates that a Chapter 13 petition has been filed, is active, but no discharge entered. This is usually translated on a consumer credit report as "Wage Earner Plan" or "WEP" in the "Account Status" portion of a trade line. Such reporting alerts any potential lender that the account is no longer in a collectable status but is being handled by a Chapter 13 trustee.
60. The CII Metro 2 Code "Z" indicates that a bankruptcy petition has been filed but the chapter is undesignated/unknown.
61. The CII Metro 2 Code "E" denotes that a Chapter 7 bankruptcy has been discharged.
62. The CII Metro 2 Code "H" denotes that a Chapter 13 bankruptcy has been discharged.
63. The CII field is a critical field for consumers and directly relates to and impacts a consumer's credit worthiness.
64. The lack of a CII reported makes it appear that a consumer has not addressed outstanding debt obligations through the bankruptcy process.
65. The lack of a CII reported also suggests that creditors are free to collect against a consumer as an individual or that no stay exists to prevent *in personam* collection activity.
66. Failure to report the correct CII indicator will prompt those making credit decisions to draw a more negative inference regarding a consumer's credit worthiness.

1 67. Under the Fair Credit Reporting Act a bankruptcy can be reported for ten years.

2 68. The ten-year rule for reporting runs from the date the bankruptcy was *filed*.

3 69. A consumer's FICO Score is directly related to the date on which a petition is filed and
4 acknowledged.

5 70. The more time that has passed since the filing of the bankruptcy, the less negative
6 impact the bankruptcy will have on a consumer's FICO Score.

7 71. Failure to reference the bankruptcy filing (CII field) and or the correct petition date
8 shall result in a lower FICO Score resulting in those making credit decisions to draw a
9 more negative inference regarding a consumer's credit worthiness.

10 **Pre Confirmation Credit Reporting Standards Regarding Balances and**
11 **Ongoing Payments When All Borrowers File Chapter 13**

12 72. Certain credit reporting standards exist on how to accurately and completely report
13 balances on consumer debts pre plan confirmation.

14 73. Pre confirmation the accepted credit reporting standard for accurately and completely
15 reporting a balance included in a Debtor's chapter 13 plan is to report the outstanding
16 balance amount as of the date of filing.

17 74. Pre confirmation the accepted credit reporting standard for accurately and completely
18 reporting a scheduled monthly payment amount is to report the contractual monthly
19 payment amount.

20 75. Pre confirmation the accepted credit reporting standard for accurately and completely
21 reporting a past due balance is to report the past due amount as of the time the petition
22 was filed.

23 76. Pre confirmation the accepted credit reporting standard for accurately and completely
24 reporting ongoing payments is to report the Metro 2 indicator D in Field 18 which
25 means no payment history available this month.

26 77. Within the credit reporting industry, the Metro 2 indicator D is seen as accurately and
27 completely illustrating that the automatic stay of the bankruptcy is preventing ongoing
28 collection activities against the debtor and creditors are not anticipating receiving
payments directly from the debtor. The Metro 2 indicator D thus simultaneously
illustrates to those making credit decisions that payments were NOT made and received
but also NOT anticipated.

1 78. Deviation from the aforementioned credit reporting industry standards shall result in a
2 more negative inference being drawn with respect to a consumer's credit worthiness.

3 **Post Confirmation Credit Reporting Standards Regarding Balances and**
4 **Ongoing Payments When All Borrowers File Chapter 13**

5 79. Certain credit reporting standards exist on how to accurately and completely report
6 balances and past due balances post plan confirmation.

7 80. Post confirmation the accepted accurate credit reporting standard for reporting balances
8 is to report the balance owed under the Chapter 13 plan terms. The balance should
9 decrease with payments made.

10 81. If the plan does not call for payments to be made on a particular debt the accurate credit
11 reporting standard is to report a \$0.00 balance.

12 82. Post confirmation the accepted accurate credit reporting standard for reporting past due
13 balances is to report a \$0.00 past due balance.

14 83. Post confirmation the accepted accurate credit reporting standard for monthly payments
15 is the Chapter 13 plan payment amount.

16 84. Post confirmation the accepted accurate credit reporting standard for payment history is
17 to report the Metro 2 indicator D each month. Reporting ongoing past due amounts and
18 ongoing late payments are not generally accepted as accurate by the credit reporting
19 industry.

20 85. Plaintiff alleges that the aforementioned industry standards are all readily available in
21 the CRRG which each and every Defendant subscribes thereto.

22 86. The CDIA and credit reporting industry recognize that allowing Creditors to
23 continuously report on going delinquencies and past due balances post confirmation
24 would objectively make filing Chapter 13 and repaying Creditors exponentially worse
25 for a consumer's credit worthiness as opposed to filing Chapter 7. Thus, deviation
26 from the aforementioned credit reporting industry standards shall result in a more
27 negative inference being drawn with respect to a consumer's credit worthiness.

28 **Plaintiffs Bankruptcy Filing**

87. Plaintiff filed for Chapter 13 bankruptcy protection on April 9, 2014 in order to
reorganize and repair Plaintiff's credit worthiness and FICO Score.

1 88. Chapter 13 of the Bankruptcy Code is titled “Adjustment of Debts of an Individual with
2 Regular Income.”

3 89. Chapter 13 allows financially overextended individual debtors to make greater
4 voluntary use of repayment plans commensurate with each debtor’s abilities, as the
5 most effective means of improving, first, debtor relief, and second creditor recoveries.

6 90. Whether a debtor uses Chapter 7, Liquidation, or Chapter 13, Adjustments of Debts of
7 an individual, congress intended bankruptcy relief be effective and should provide the
8 Debtor with a fresh start.

9 91. Post filing, Defendants would not accept payments directly from Plaintiff.

10 92. Post filing, Defendants were not anticipating receiving payments directly from Plaintiff.

11 93. Under the terms of the confirmed Chapter 13 plan, unsecured Creditors are allowed a
12 21% disbursement of their filed claims over the course of Plaintiff’s plan.

13 94. Plaintiff’s plan was confirmed on August 22, 2014.

14 95. Once confirmed the plan became a final judgment with respect to the party’s rights and
15 liabilities.

16 96. The res judicata effect of confirmation may be eliminated only if confirmation is
17 revoked or if the case is dismissed.

18 97. Confirmation of a plan prohibits actions by creditors inconsistent with the plan.

19 98. While confirmation of a plan is not a discharge it does fix the terms upon which claims
20 are to be settled and both a confirmation order and discharge order are final orders.

21 99. The CDIA recognizes the finality of confirmation orders and the aforementioned credit
22 reporting industry guidelines are specifically setup to harmonize the bankruptcy code
23 and credit reporting guidelines.

24 100. Federal Rules of Bankruptcy Procedure (“FRBP”) 3004 and 3021 mandate that
25 distributions to creditors are on allowed claims only.

26 101. A proof of claim must be filed in order for a claim to be allowed. 11 U.S.C §502(a).

27 102. Thus failure to file a proof of claim results in zero distributions to a creditor through the
28 plan.

103. In the case of an unsecured non priority claim failure to file a proof of claim sets the
terms of repayment at \$0.00 owed.

104. Item 1 of the official Proof of Claim form promulgated by the Supreme Court does not acknowledge past due amounts on unsecured debts. The same proof of claim form, however, specifically asks for and requires a secured creditor to list the arrearage/past due amounts on a secured claim in item 4.
105. On April 14, 2016 Plaintiff ordered a three bureau report from Experian Information Solutions, Inc. to ensure proper reporting by Plaintiff's Creditors.
106. Plaintiff noticed 1 different trade lines on the April 14, 2016 credit report all reporting inaccurate, misleading, or incomplete information that did not comport with credit reporting industry standards. Specifically, multiple trade lines continued to report Plaintiff's accounts with past due balances, and/or inaccurate balances.
107. In response, Plaintiff disputed the inaccurate tradelines via certified mail with Experian Information Solutions, Inc.; Equifax, Inc.; and TransUnion, LLC on August 2, 2016.
108. Plaintiff's dispute letter specifically put each Creditor on notice that Plaintiff had filed for bankruptcy and the account was not reporting the bankruptcy accurately or worse not at all. Plaintiff specifically requested each Creditor investigate the proper way to report Plaintiff's bankruptcy. Plaintiff noted that there should not be any past due balance reported, the account should not be listed as charged off, transferred or sold, with an inaccurate monthly payment or that the account is in collections. There should not be any late payments reported after Plaintiff's case was filed and to ensure that the proper monthly payment was being reported. Last, Plaintiff noted that under *Gorman v. Wolpoff & Abramson*, Plaintiff expected the accounts to be reported disputed if the Creditor disagreed with Plaintiff's dispute.
109. Plaintiff is informed and believes that each CRA received Plaintiff's dispute letter and in response sent Plaintiff's dispute to each DF via an ACDV through e-OSCAR.
110. On October 4, 2016 Plaintiff ordered a second credit report from Experian Information Solutions, Inc.; Equifax, Inc. and TransUnion, LLC to ensure Plaintiff's accounts had been updated.
111. Plaintiff was not pleased to notice that the inaccuracies had not been updated or removed. Plaintiff's Equifax score rose by only 4 points and Plaintiff's TransUnion score rose by only 8 points.

112. Defendant TD Bank USA, National Association was reporting Plaintiff's account, beginning in 4339xxxx, with a past due balance in the amount of \$430.00, failure to pay listed in the 24 month payment history, fails to note that payments have been received, and fails to note that the account is being disputed, despite the Court Ordered treatment of its claim under the terms of Plaintiff's Chapter 13 plan of reorganization. The terms of the plan show that this claim is to be treated as an unsecured debt. Defendant filed a proof of claim in the amount of \$441.35. The trustees' accounting shows that there has been a disbursement of funds totaling \$24.82, that the principle owed on the account totals \$416.53, and that no past due amount exists. This claim was modified under 11 U.S.C. sections 1322 and 1327. The past due balance that is being listed by Defendant is incorrect because the claim was modified. Moreover, the past due balance listed by Defendant does not comport with Metro 2 industry standards. Defendant is also reporting a delinquency in March of 2016 rather than listing the correct CII D indicator. Defendant is simultaneously reporting that the account is current in the payment history while also reporting a past due balance.

113. The actions of the Defendants as alleged herein are acts in violation of the Fair Credit Reporting Act, 15 U.S.C. § 1681s-2(b).

114. The actions of the Defendants as alleged herein are acts in violation of the Consumer Credit Reporting Agencies Act California Civil Code § 1785.25(a).

FIRST CAUSE OF ACTION

(Violation of Fair Credit Reporting Act 15 U.S.C. § 1681s-2(b))
Against Defendants and Does 1-100)

TD Bank USA, National Association –Failure to Reinvestigate.

115. Plaintiff realleges and incorporates herein the allegation in each and every paragraph above as though fully set forth herein.

116. 15 USC 1681s-2(b) and 15 USC 1681i-(a)1 prohibits furnishers from providing any information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate or misleading and

requires a furnisher to update and or correct inaccurate information after being notified by a consumer reporting agency of a dispute by a consumer.

117. Defendant TD Bank USA, National Association violated section 1681s-2(b) by failing to conduct a reasonable investigation and re-reporting misleading and inaccurate account information.

118. The CRAs provided notice to the Defendants that Plaintiff was disputing the inaccurate and misleading information but TD Bank USA, National Association failed to conduct a reasonable investigation of the information as required by the FCRA.

119. Based on Plaintiff's dispute, Defendants should have known their accounts were included in Plaintiff's Chapter 13 plan of reorganization. The most basic investigation would include a simple review of well-established credit reporting industry standards.

120. Plaintiff alleges Defendants did not review well established industry standards for credit reporting.

121. If Defendants had reviewed such standards Defendants would have seen their reporting was not in compliance and consequently inaccurate and or incomplete.

122. Such an investigation would be unreasonable.

123. Plaintiff also alleges that Defendants did not investigate whether Plaintiff filed for bankruptcy, whether their accounts were included, the terms of the plan, or whether or not the terms had been approved.

124. The lack of investigation is unreasonable.

Experian Information Solutions, Inc. and Equifax, Inc. – Failure to Reinvestigate Disputed Information.

125. Plaintiff realleges and incorporates herein the allegation in each and every paragraph above as though fully set forth herein.

126. After Plaintiff disputed the accounts mentioned above, each CRA was required to conduct a reasonable investigation and to delete any information that was not accurate under 15 USC 1681i-(a)1.

127. The most basic investigation required each CRA to send all relevant information via an ACDV to the furnishers which they did not do.

1 128. Thus the CRAs failed to conduct a reasonable investigation and failed to correct the
2 misleading and or inaccurate statements on the account within the statutory time
3 frame or at all.

4 129. In the alternative Plaintiff alleges that each CRA has its own independent duty to
5 conduct a reasonable investigation 15 USC 1681i-(a)1.

6 130. Each CRA is not a passive entity bound to report whatever information a DF
7 provides.

8 131. Plaintiff alleges that each CRA is readily familiar with Metro 2 guidelines and credit
9 reporting industry standards.

10 132. **In fact, each CRA sponsors and authorizes workshops hosted by the CDIA that**
11 **teach the following to DFs:**

- 12 a. Do not report delinquencies post petition pre discharge in the payment history
13 section regardless of Chapter 7 or Chapter 13. Instead report the Metro 2
14 indicator D.
- 15 b. In Chapter 13 cases do not report past due balances post confirmation.
- 16 c. In Chapter 13 cases do not report balances that are inconsistent with the terms
17 of the Chapter 13 plan.
- 18 d. In Chapter 13 cases do not report monthly payments that are inconsistent with
19 the terms of the Chapter 13 plan.
- 20 e. The above reporting is the correct and accurate way to report debts included in
21 consumer bankruptcy filings.

22 133. Given the aforementioned, Plaintiff alleges that each CRA can and does suppress
23 inaccurate information from being reported when DFs provide inaccurate
24 information.

25 134. Each CRA can and does instruct DFs on how to properly report certain accounts from
26 time to time upon request from the DF.

27 135. Each CRA failed to conduct a reasonable investigation because any basic
28 investigation would have uncovered that certain DFs were not following credit
reporting industry standards.

136. Each CRA would have known that Plaintiff filed for Chapter 13 based on multiple
other accounts reporting as much.

- 1 137. Each CRA would have known that Plaintiff's plan had been confirmed based on
2 multiple other accounts reporting as much.
- 3 138. Each CRA would have known that failure to report a CII given that a Chapter 13 was
4 filed did not comport with industry standards.
- 5 139. Each CRA would have known reporting a past due balance post confirmation does
6 not comport with industry standards.
- 7 140. Each CRA therefore did not do the most basic investigation regarding credit reporting
8 industry standards otherwise the aforementioned would have been uncovered.

9 **SECOND CAUSE OF ACTION**

10 (Violation of California Consumer Credit Reporting Agencies Act
11 California Civil Code § 1785.25(a) Against Defendants and Does 1-100)

12 **TD Bank USA, National Association – Reporting Inaccurate Information to
CRAs.**

- 13 141. Plaintiff realleges and incorporates herein the allegation in each and every paragraph
14 above as though fully set forth herein.
- 15 142. In the regular course of its business operations, Defendants routinely furnish
16 information to credit reporting agencies pertaining to transactions between Defendants
17 and Defendant's consumers, so as to provide information to a consumer's credit
18 worthiness, credit standing and credit capacity.
- 19 143. Defendants intentionally and knowingly reported misleading and inaccurate account
20 information to the CRAs that did not comport with well-established industry standards.
- 21 144. Plaintiff alleges that Defendants re-reported the information contained herein in
22 violation of California Civil Code § 1785.25(a).
- 23 145. Plaintiff also alleges that Defendants had reason to know that the information reported
24 on Plaintiff's accounts were misleading, inaccurate, incomplete, and did not comport
25 with well-established credit reporting industry standards.
- 26 146. Plaintiff alleges that Defendants had reason to know that by not comporting with well-
27 established industry standards lenders will draw a more negative inference with respect
28 to Plaintiff's credit worthiness.

- 1 147. Plaintiff alleges that the bankruptcy notices, disputes letters from all three credit
2 reporting agencies, the consumer data industry resource guide, and results of its
3 investigation should have provided notice to Defendants of its misleading and
4 inaccurate reporting as well as being noticed of the plan confirmation and proof of
5 claim forms sent by the U.S. Bankruptcy Court.
- 6 148. Defendant failed to notify Experian Information Solutions, Inc. and Equifax, Inc. that
7 the information Defendants re-reported was inaccurate before the end of 30 business
8 days, in violation of California Civil Code § 1785.25(a).
- 9 149. Defendants' communications of false information, and repeated failures to investigate,
10 and correct their inaccurate information and erroneous reporting were done knowingly,
11 intentionally, and in reckless disregard for their duties and Plaintiff's rights.
- 12 150. As a direct and proximate result of Defendants' willful and untrue communications,
13 Plaintiff has suffered actual damages including but not limited to inability to properly
14 reorganize under Chapter 13, reviewing credit reports from all three consumer reporting
15 agencies, time reviewing reports with counsel, sending demand letters, diminished
16 credit score, and such further expenses in an amount to be determined at trial.

17 Wherefore, Plaintiff prays for judgment as hereinafter set forth.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays for judgment as follows:

- 20 1. For preliminary and permanent injunctive relief to stop Defendants from
21 engaging in the conduct described above;
- 22 2. Award statutory and actual damages pursuant to 15 U.S.C. § 1681n and
23 California Civil Code § 1785.31;
- 24 3. Award punitive damages in order to deter further unlawful conduct pursuant to
25 15 U.S.C. § 1681n; and California Civil Code § 1785.31
- 26 4. Award attorney's fees and costs of suit incurred herein pursuant to 15 U.S.C. §
27 1681n & o; California Civil Code § 1785.31;
- 28 5. For determination by the Court that Creditor's policies and practices are
unlawful and in willful violation of 15 U.S.C. § 1681n, et seq.; and

- 1 6. For determination by the Court that Creditor's policies and practices are
2 unlawful and in negligent violation of 15 U.S.C. § 1681o;

3
4 Dated: November 1, 2016

SAGARIA LAW, P.C.
/s/ Elliot Gale, Esq.
Scott Sagaria, Esq.
Elliot Gale, Esq.
Attorneys for Plaintiff

7
8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands trial of this matter by jury.

10
11 Dated: November 1, 2016

SAGARIA LAW, P.C.
/s/ Elliot Gale, Esq.
Scott Sagaria, Esq.
Elliot Gale, Esq.
Attorneys for Plaintiff